

COMMITTEE ON JOINT SCHOOL BUILDINGS

January 2, 2007

5:00 PM

Chairman Beaudry called the meeting to order.

The Clerk called the roll.

Present: School Committee Members Beaudry and Gelinas, Aldermen
Thibault, Roy and Long

Absent: School Committee Member Herbert

Messrs.: T. Clougherty, A. Jefferson, T. Arnold

Chairman Beaudry addressed Item 3 of the agenda:

Ratify and confirm poll conducted on December 1, 2006 approving the
expenditure of approximately \$10,800 for the bathroom in the tech room
area of Bakersville School.

On motion of School Committee Member Gelinas, duly seconded by Alderman
Thibault, it was voted to ratify and confirm the poll.

Chairman Beaudry addressed Item 4 of the agenda:

Update on the School Facilities Improvement Project (Monthly Report –
December 2006/January 2007).

Tim Clougherty, Facilities Engineer, stated I will have Allan Jefferson from
DMJM give us an update on the monthly progress.

Allan Jefferson, DMJM, stated from the high school and middle school standpoint,
the majority of the effort is focused on sound attenuation installation that is
proposed on the exterior, weather permitting and some duct work reconfiguration
on the interior. The balance of the work has been primarily punchlist activities
with limited amounts at the elementary schools. That is about it.

Chairman Beaudry stated I know we are going to be talking about it on Item 5 and
maybe we should wait for that but I have some questions on change orders that are
in our packet. Does anybody have any questions at this point?

Alderman Long stated with respect to retainage...well I have a couple of things actually. Is there some way we can get a percentage of completion for punchlists even though you may still be adding on items? Also regarding the retainage could we somehow tie that into what percentage or its effect on the punchlist? For example, Company A retaining \$100 and their punchlist totals \$20. Do you know what I mean?

Mr. Clougherty asked are you looking for a sub-contractor by sub-contractor basis for withholding retainage.

Alderman Long answered we don't have to go into detail like you have to do a coat of paint on a door or something. I am looking for the larger punchlist items.

Mr. Clougherty stated I think it is a possibility. It all depends on what type of context we are talking about.

Alderman Long replied well maybe if we got a list of the punchlists then I could be more detailed. I just want some sort of idea. With respect to the retainage, if a contractor doesn't produce where does that retainage go? Does that go to Gilbane or back into our coffers?

Mr. Clougherty responded I would have to understand a little bit more what you are talking about.

Alderman Long stated okay say I am the steel erector contractor and I needed to add welds to wherever and...

Mr. Clougherty interjected you contracted \$100,000 and we withheld \$10,000...

Alderman Long interjected and I need to produce \$4,000 worth of work and I didn't do that so Gilbane subbed it out and it cost them \$2,000 and there is \$8,000 left in that retainage. You are not going to give the retainage to the contractor because he didn't complete the contract with respect to the punchlist. You don't just deduct what it cost you to do that work.

Mr. Clougherty stated well it is up to Gilbane to administer the sub-contracts at that level. We don't have any relationship with the steel erector or the welder. What we would be doing is withholding money to insure the work is completed. Once the work is completed then we release those monies to Gilbane. It is up to them to administer.

Alderman Long asked so we have control over the retainage is what I am asking. That is our control. Gilbane is not saying this contractor should be paid his retainage or whatever.

Mr. Clougherty responded you are asking two different questions. Do we have control of the retainage? Yes we do within our contractual agreement with the limitations therein. Does Gilbane approve the release of retention to the City? They do that as well. They certify that ABC Contractor is complete with all of their work and they have inspected it and they are done with their punchlist work and they recommend release of retainage and request release of retainage to the City.

Alderman Long asked and that is verified through DMJM.

Mr. Clougherty answered that is correct.

Alderman Long asked so they are on board with that also in saying yes it is okay and they have met their requirements.

Mr. Clougherty answered that is correct and we receive regular requests for release of final payment, which is essentially saying a contractor is done and we regularly will release that retainage. It is good business practice not to mention that it is written into our contract. I don't think that we are required to but when a contractor is fully complete with their obligations and their punchlist items are complete we release that retainage.

Alderman Long asked so just to summarize if I may if we can get a list of the punchlists and I know it is cumbersome and I am not looking for a paper report. A CD would be fine. I am anxious to see what kind of work is involved in the punchlists and I would like to see what percentages are being completed because as we go on some get busy and they go somewhere else and good luck trying to get them in to take care of some detail that is cost prohibitive for them to come back and take care of. If we could tie the retainage somehow to the punchlist...you know what contractors are we holding retainage for that owe work that are responsible for the punchlist. I guess that is how I would say it.

Mr. Clougherty asked could you repeat that last sentence.

Alderman Long answered what subcontractors that are responsible for the punchlists do we have retainage money for. Company A has a punchlist to paint doors. Is there still retainage money for Company A? I would assume there would be because nobody would have signed off on them if the doors needed to be painted but what I am looking for is what is that amount. What do we have \$2.1

million roughly? As we come down on that I would like to see what realistically this number is going to be and how much is tied into the punchlists.

Mr. Clougherty responded can I just paraphrase. If I gave you what retainage is being held from what contractors and for what work or what purpose would that answer your question?

Alderman Long replied well there is an automatic retainage for...is it a year.

Mr. Clougherty responded no I don't believe there is.

Alderman Long stated I was under the understanding that the design-build contractor will keep 10% for nine months or a year.

Mr. Clougherty replied I am not intimately familiar with the terms and conditions that Gilbane imposes upon their sub-contractors but I am 99% certain that we don't withhold monies just to withhold monies for a certain period of time. If Gilbane's contract was executed on April 28, 2003 and they were done on April 29, 2003 we would have paid them \$94.9 million within reason. I don't believe that there are any time stipulations. There are stipulations within retainage that talk about the ability for the City to allow Gilbane to be paid retainage or reduce retainage when a building project is 50% complete. We have the right to release retainage or reduce retainage from say 10% to 5%.

Alderman Long asked are you aware whether or not Gilbane has any retainage of their own.

Mr. Clougherty answered we don't audit Gilbane's books individually sub-contractor by sub-contractor. We haven't done an audit of their accounts payable or accounts receivable no.

Alderman Long asked so you wouldn't know.

Mr. Clougherty answered no.

Alderman Thibault stated I would imagine it is Gilbane who is holding that up until the work is properly done so that he doesn't get socked with it. Am I right?

Mr. Clougherty responded that would be prudent business practice for a general contractor but I can't speak to exactly how they are accomplishing that.

Alderman Thibault stated I am confused. How could you, Tim, or your department hold retainage on some job that you gave the general contractor to do?

It would seem to me that the general contractor is probably holding a retainage on that sub-contractor.

Mr. Clougherty replied that is usually how it works.

Alderman Thibault stated this question is almost...I don't know. Maybe I am confused but it would seem to me that that is where it would have to go, not here. I think it would have to go to Gilbane. Is Gilbane holding a retainage on some sub-contractor that has not finished his work because he doesn't want to get caught with it because he has to answer to you that that job is complete? I am confused maybe.

Mr. Clougherty responded I think you are along the right lines but it is much more complicated when you are talking about the magnitude of the dollars and cents and the definition of what is complete and what is not complete when you get out into the actual field. That is where there is often consternation between the owner and the general contractor or the design builder and their respective sub-contractors. It does get into some gray areas and becomes a point of concern.

Alderman Thibault stated well I am still confused a little bit Tim. If, in fact, I am a general contractor and I hire you to do a job for me as a general contractor I am going to hold you responsible to finish your job and if you don't I might hold something back until you do finish it so that is what I mean. This is the line I am looking at and maybe I am wrong but I would think that is where it has to be. I don't think it should go to you. The sub-contractor should not be going to you.

Mr. Clougherty responded no they should not be coming to me. Our line of communication is with Gilbane and should be with Gilbane only.

Chairman Beaudry stated during that recent lockdown I had some calls from teachers where new locks were put on their doors and they weren't working and the lock actually turned 360 degrees so you couldn't lock the door. Central was one location that I got a call where teachers said there was no point in having a lockdown because you can't lock the doors and these are new locks. I know we had problems at Memorial High School with doors and locks. I know that company is no longer with us. The new company you hired are they going to go through and complete the punchlist for broken door mechanisms and locks and stuff that the old company left us?

Mr. Clougherty responded to the best of our knowledge they are going through that and will be fixing these items. You are correct in your previous statement that Gilbane had engaged a sub-contractor and the relationship was terminated or severed in some form or fashion so it left a lot of loose ends hanging out there.

They engaged another sub-contractor to undertake the work that was left outstanding and it is being reported to us that they are accomplishing that work. We just did a comprehensive walk through at Southside Middle School about three weeks ago and went through the level of completion with Gilbane and their sub-contractor. He had a pretty extensive list of items to correct and he was going to go back and verify the quality of his installation at various locations to insure that when an inspection is called for it is actually complete.

Chairman Beaudry asked do you have a timeframe for some substantial completion on the punchlists that are out there.

Mr. Clougherty answered no.

Chairman Beaudry asked could this go on for years.

Mr. Clougherty answered it could. I am hopeful that it won't. We don't have any schedule that I can, with confidence, give you that would reflect when we anticipate Gilbane to be substantially complete on the project.

Chairman Beaudry stated I haven't seen the punchlists as Alderman Long stated but is there anything that is against life safety codes or that is life threatening to our students or faculty that would need immediate attention. Is there anything on the punchlists that should be done in a timely manner?

Mr. Clougherty replied I believe there are issues related to life safety and we bring those to Gilbane's attention regularly as they come up.

Alderman Long asked could you give us an example of that.

Mr. Clougherty answered lack of installation of a fire damper in a rated partition.

Alderman Long asked how long have they known that this existed.

Mr. Clougherty answered I would say they have known for a period of time.

Alderman Long asked and the issue is that the contractor isn't available to come back.

Mr. Clougherty answered we haven't seen any action. I am not going to speculate as to the reason for that.

Chairman Beaudry stated I would assume and hope that you are pursuing any life safety code issues pretty hard with them so we can get this done. God forbid

something happens where we have an injury or loss of life and then we find out that it was because of defective workmanship or something that wasn't put in that should have been put in.

Mr. Clougherty replied Gilbane has been put on notice that those deficiencies exist and we are hopeful that they will correct them.

Alderman Long asked is there an avenue in which we could correct them ourselves.

Mr. Clougherty answered there is.

Alderman Long asked and are we pursuing that.

Mr. Clougherty answered we are exploring those opportunities.

Chairman Beaudry stated before we move on to the next Item, on page 4 of the information that was given out to us we have a litany of change orders but are these all change orders that are already finished – from 1 to 26. Actually it is page 7 of 13 under...

Mr. Clougherty interjected yes those are change orders that are already completed and in your package tonight we are requesting approval of the final change order #26.

Chairman Beaudry asked if we can do this right now on page...I don't know how they gave the package to you but it is page 5-8 handwritten and then it has page 1 of 2 and under definition it says "previously, in CCA 990056, \$30,439.08 was removed from Gilbane's contract for preconstruction videos that were not completed at six Manchester schools." Why weren't they completed and who authorized not to put them in?

Mr. Clougherty answered I can't find the page but I can speak to it directly. They weren't completed because Gilbane didn't do them. They were required by contract that they be done. The video is supposed to take place prior to any construction activities so they can document the condition of the schools prior to construction beginning in case there are any issues after the fact with the condition of finishes or what have you. They weren't done.

Chairman Beaudry asked so that is a rebate back to us.

Mr. Clougherty answered that is correct.

Chairman Beaudry stated on the next page 5-10, 990068 would be the CCA number but it says “in addition, any remaining attic stock Gilbane has on hand currently will be turned over to Dennis at Aramark.” Is Aramark going to purchase that from us or are we just going to give that stock to them?

Mr. Clougherty replied we work with Aramark to come to an agreement on the value of the material if it was substantial but we are talking about filters in this instance and filters are pretty cheap given the amount of area that they take up. This credit was offered just so we didn’t have to have \$10,000 worth of filters, which are probably like 1,000 filters and it takes up too much area for storage so the credit was negotiated in lieu of that. The credit comes back to the City.

Chairman Beaudry asked so Aramark is giving us roughly a \$10,000 credit.

Mr. Clougherty answered no this comes from Gilbane and goes into the project fund.

Chairman Beaudry asked so Gilbane is going to give a credit of \$10,000 and the filters are going to go to Aramark.

Mr. Clougherty answered Gilbane is going to give a credit of \$10,000 and no filters will go anywhere.

Chairman Beaudry asked how come it says, “any remaining attic stock Gilbane has on hand currently will be turned over to Aramark.”

Mr. Clougherty answered they probably purchased some filters during the time that this was being negotiated and those filters we would turn over to Aramark because we essentially would have no use for them. Those would be the first filter changes on the units that we just installed.

Chairman Beaudry asked so these two changes, if I may, where would we see those on the spreadsheet. You are looking at roughly \$40,000 now that is coming back to the project from Gilbane. Where would we see that on the spreadsheet?

Mr. Clougherty answered you would see that...there is a summary for Change Order #26. There is a summary page and it is hard for me to describe where it is because they are not numbered. It is entitled Change Order #26 CCA Authorization Summary. It is in portrait format rather than landscape if that gives you any indication as to where it is.

Deputy Clerk Normand stated it is page 5-2.

Mr. Clougherty stated as far as the previous spreadsheet goes are you asking where you would find it on there. You wouldn't find those individually there. That \$9,688 credit is a component of Change Order #26 so all you see is the net contract addition or deletion under the main spreadsheet that says CO 26.

Chairman Beaudry asked but if we didn't have Change Order #26 coming before us tonight where would we see those two numbers – the \$30,000 and the \$10,000.

Mr. Clougherty answered you would have seen it previously because when we bring you the change orders you get all of the back-up associated with them. That is why you have all the back up associated with Change Order #26 tonight.

Chairman Beaudry stated I see the credit for the attic stock but where is the \$30,000 credit for the videos.

Mr. Clougherty responded that would have been, I believe, in a previous change order. This change order just recognizes the fact that they did, in fact, do four out of the however many were credited previously and makes that corresponding adjustment.

Chairman Beaudry stated I have a few more questions. On Page 5-18 regarding providing all labor and material required to provide a door as requested per bulletin 00016, why wasn't that on the initial bid. It says it is in a different location.

Mr. Clougherty replied it wasn't anticipated that doors were necessary in those areas and it wasn't until after the City, DMJM and the School District administration and principals had reviewed the plans and approved those plans and the area was constructed that it was realized that those doors, well they were requested from the nurses at each of the individual locations and we actually brought that to this Committee for approval.

Chairman Beaudry stated I remember approving it and it was the belief of the Committee that they were a necessity and I believe they were a necessity and I just don't understand why they weren't on the initial bid when it went out.

Mr. Jefferson stated I think I can speak to that. The issue was were they required by code and they weren't required by code relative to egress but I believe it was brought up as a subsequent safety issue that was raised and also brought before this Committee and approved.

Chairman Beaudry stated on page 5-20 regarding plumbing, it seems like it is a lot of money, \$5,200 or \$4,854 for plumbing two stainless steel sinks.

Mr. Clougherty responded it is a lot of money given the description but when you saw the amount of work that was necessary in order to get the drain lines, vent lines and water lines to this area, we think that it is a fair and reasonable price. There was no plumbing in the direct vicinity so it is not merely a matter of plopping a sink on a wall and hooking up the piping. The piping had to be brought from another location in order to accommodate the sinks in this location. The floors had to be core cut and things of that nature so the \$5,000 is a reasonable price, although the description might lead you to think otherwise.

Chairman Beaudry stated one more thing. On page 5-22, why wasn't this part of the initial proposal.

Mr. Clougherty asked what is the description.

Chairman Beaudry answered "install mini-gym volleyball inserts and paint the lines." I thought that was part of the mini-gym project to begin with at Memorial High School.

Mr. Clougherty stated it wasn't anticipated that the volleyball inserts were going to be required there. We didn't ask for them and I believe the striping was something that was above and beyond normal striping so it was recognized as a viable change order to their contract.

Chairman Beaudry asked on page 5-28 we are putting \$35,000 in low nox and nexus packages into brand new boilers. Again, why wouldn't that have been part of the project?

Mr. Clougherty answered the new boilers and engineering is \$251,000 as well as the low nox and nexus packages for the boilers. Those are both at Memorial High School and they were approved by this Committee. This was kind of an alternative for higher efficiency and lower products of combustion. We asked this Committee for that consideration and it was approved. Those low nox packages were actually installed on the boilers on Day 1. They came with the boilers. Why they are separated here is probably because Gilbane prepared their CCA differently and they had a different sub-contractor or something they were working with and it is just the paperwork.

Chairman Beaudry stated it would have been nice to have a footnote so I didn't have to ask that question because it looks like they are putting brand new parts on a brand new boiler.

Mr. Clougherty responded there is actually a third one to this that you haven't seen yet. It is confusing to me as well at times.

Chairman Beaudry stated I have one further and then we will move on. The asbestos removal on page 5-36, again we spent over \$1 million on asbestos removal and if they didn't identify that there was additional asbestos why are we picking up the cost? Why wouldn't that fall on Gilbane because they made the mistake of not catching it? It is change order 210040.

Mr. Clougherty responded this is one of the change orders that was evaluated comprehensively in our evaluation of Gilbane's request for equitable adjustment and justification was found within their request that justified the payment of that \$13,987. Therefore, it was included therein and it was actually approved by this Committee some time ago.

Chairman Beaudry replied I think I raised the same issue back then. I can't understand why we are...if I bid on removing asbestos in this room and for some reason I didn't foresee that there was going to be asbestos in the ceiling or whatever wouldn't that be my fault for not doing a bore test?

Mr. Clougherty responded not necessarily. If we told you that there was no asbestos in the ceiling and there was asbestos found thereafter then we would owe you additional money because there was asbestos and you put your bid together based on the assumption that it was merely drywall and merely a tin ceiling.

Chairman Beaudry asked so this area that was done they asked where the asbestos was and somebody from your department said this is where it would be or would they go in and test the whole area to see what was hot.

Mr. Clougherty answered it is a little more complicated then that but you are on the right track. We have some surveys that tell us where some of the asbestos is in our buildings and when Gilbane went in to our schools they did as comprehensive an asbestos study as they could put together for their construction purposes. There were some areas where additional asbestos or hazardous materials were found and because the City didn't identify those up front, Gilbane put their numbers together based on the assumption that they were clean and the City found that Gilbane was justified in their request for additional compensation. That is one of those examples you are seeing here.

Chairman Beaudry stated I do have one other one on page 5-40, the smoke testing for McDonough gymnasium. Why wouldn't that be testing with the people who are doing the alarm system if we are doing an additional \$2,400 for a test?

Wouldn't that be part of the project for whoever is installing the alarm system or equipment?

Mr. Clougherty responded it would be but this isn't for a fire alarm. This is for an HVAC system. We asked them to do a smoke test to show us the air patterns of the air handling units and the return grills at the gymnasium at McDonough. We wanted to verify that the airflow was proper in those locations as far as the patterns go.

Chairman Beaudry asked again though that is under the HVAC system correct.

Mr. Clougherty answered it was a new system.

Chairman Beaudry asked so why wouldn't the people who installed it do the test instead of hiring someone else to do an airflow test.

Mr. Clougherty answered then it wouldn't be independent.

Chairman Beaudry asked so there was a discrepancy on whether the flow was proper or not and that is why you hired an independent vendor.

Mr. Clougherty answered that is correct. We wanted to verify that it was correct.

Alderman Roy stated I just wanted to go back and I guess Tim a good place to start would be 5-5 on that change order. There is a contractor name that has been scratched out as well as the number on that page doesn't necessarily match the numbers on the preceding pages of the summary.

Mr. Clougherty asked is that the one that totals \$9,688.

Alderman Roy answered correct. The contractor on the bottom, at least on the web page, for \$9,315 was crossed out and it was crossed out in Alderman Long's report as well. Was that Gilbane or was that crossed out for some reason?

Mr. Clougherty replied I don't understand why it was crossed out. Our contractor was Gilbane. They can represent that it came from a HVAC supplier or several HVAC suppliers but the fact of the matter is that they offered us a credit for \$9,688 for filters and belts and I did the research to find out whether the value of the materials they offered was fair. It was fair so he doesn't care who it comes from.

Alderman Roy stated that is fine. It's just when things get crossed out it raises a little red flag.

Mr. Clougherty responded I can fully appreciate that. I honestly don't understand why it was crossed out.

Alderman Roy asked and the \$9,688 if we go back I think it is three pages from the summary and I have it as page 21 and it shows up on the summary as an initial estimate of \$9,315, which doesn't show the 8% Gilbane. When it gets reflected back into our spreadsheet is that \$9,688 included or the original number?

Mr. Clougherty answered the \$9,688. There is one page that precedes all of them and I apologize because I don't have the same version as you do but it has all of the individual items that we were just describing summarized. It is the actual cover sheet for Change Order #26. The page immediately following that has Frank Thomas' signature on it. That is the change order. The other items that you will see with my signature, as well as those of Gilbane, are the components of the change order. This is the contractual document that Allan held up and that is where you see the \$9,688.

Mr. Jefferson stated just for clarification the other sheet is just a summary of the change order description and basically it just summarizes some of the initial estimates that came in prior to the final CCA's being approved.

Alderman Long moved to accept the report and forward it to the Board of Mayor and Aldermen for informational purposes. Alderman Thibault duly seconded the motion.

Alderman Long asked does Gilbane charge us for scheduling or a superintendent's fee.

Mr. Clougherty answered it is built within their guaranteed maximum price. I don't know the actual components of what their scheduling is but their superintendents are in there as well as scheduling. There are requirements within the contract for providing the City with regular updated schedules.

Alderman Long stated this one was pertaining to one of these authorizations...okay so they can charge us for supervising a change authorization even though they sub it out to a contractor. It is the same one that Committeeman Beaudry was talking about, page 5-22, the volleyball court mini-gym. I am assuming it is a schedule for \$500. It is the same cost code as new equipment.

Mr. Clougherty replied I am not sure exactly what that \$500 was for but if it was for supervision that is something that we definitely want.

Alderman Long responded this one says schedule and there is one that said superintendent and that was on page 5-40 for the McDonough gymnasium smoke testing. What you are telling me is that supervision...we are required to pay for Gilbane's supervision when there is a change order and then Gilbane subs it out? We still have to pay Gilbane to supervise the work being done? Isn't that already included in their contract to be doing that?

Mr. Clougherty replied no because of the change order.

Alderman Long asked so it is an added supervision.

Mr. Clougherty answered that is correct.

Chairman Beaudry stated if I may I would like to follow-up on what Alderman Long was just talking about. If this was an independent survey, why would Gilbane be getting a fee for anything? If it is independent they shouldn't even be there.

Mr. Clougherty responded Gilbane was still there.

Chairman Beaudry replied but you said the reason why it wasn't part of the project was because you wanted an independent opinion because there was a question on the air quality is what you told me. So if that is the question then why...

Mr. Clougherty interjected this isn't a required test and because it wasn't a required test and we had suspicions that the airflow may be improper, we asked them to perform this test and we agreed that we would pay for it.

Chairman Beaudry asked but why would Gilbane...Gilbane is the one that picked this independent company then or did you pick the independent company to do the test.

Mr. Clougherty answered it isn't an independent company. We had the balancer there acting as an independent agent but we also had the mechanical contractor there and because Gilbane contracts with both of them, they were there.

Chairman Beaudry stated again I don't know if I misunderstood you but I thought when I asked the question you said it was an independent study that is why it was a change order and if it was an independent study why would Gilbane be involved.

Mr. Clougherty replied it is not a change order because it is an independent study. It is a change order because it is a test that is not required by contract and we requested that it be done.

Chairman Beaudry asked and Gilbane would still oversee that. My concern is that if there is a discrepancy and you feel something needs to be done that isn't there why would Gilbane be involved in the independent testing?

Mr. Jefferson answered the way that they were involved is they were there to basically make sure that all of the associates trades and contractors and testers showed up. They coordinated with the Fire Department so that the smoke detectors in the units could be shut down and coordinated with the school to shut the units down. We were present along with one or two members of the City to witness the test and confirm that the system was operating the way it should.

Alderman Long stated regarding that last statement, there were one or two members of the City that were there and DMJM was there and we are still required to pay Gilbane's supervisor to be there.

Mr. Clougherty replied yes. We asked them to provide the test.

Alderman Long responded it would seem to me that we may be able to save 8% in supervisory fees if we just went out and did this...you know got the independent tester ourselves. Wouldn't that have been easier?

Mr. Clougherty replied it would have been but if the results were unfavorable to Gilbane then they wouldn't have been as credible had Gilbane not witnessed the test themselves.

Alderman Long asked so we are requiring the test and Gilbane has to be there so they can verify that we did the test okay and there is no...

Mr. Clougherty interjected right. We invite everybody along so no one can point fingers after the fact and say that the test was unfavorable.

Chairman Beaudry called for a vote on the motion to accept the report and forward it to the Board of Mayor and Aldermen for informational purposes

Chairman Beaudry addressed Item 5 of the agenda:

Change Order #26.

Chairman Beaudry stated I think we just went through this but if there is any other discussion on Change Order #26. If not, I will accept a motion to approve.

School Committee Member Gelinas moved to approve Change Order #26.
Alderman Roy duly seconded the motion.

Alderman Roy stated we talked about the test enough. Was it successful?

Mr. Clougherty responded it was successful. The unit operated as it should have as far as the airflow patterns go, however, there is an issue with noise and the unit is going to have to be reconfigured in some form or fashion to address that.

Alderman Roy asked is that a design issue.

Mr. Clougherty answered yes it is.

Chairman Beaudry called for a vote on the motion. There being none opposed, the motion carried.

Chairman Beaudry addressed Item 6 of the agenda:

Request of the Building & Sites Committee seeking approval for the construction to close in the press box at the Chabot/McDonough Field for MCTV.

Alderman Long moved to approve the request. School Committee Member Gelinas duly seconded the motion.

Chairman Beaudry stated this is self-explanatory. The money will be coming out of the existing bond of that project.

Chairman Beaudry called for a vote. There being none opposed, the motion carried.

Chairman Beaudry addressed Item 7 of the agenda:

Request of the Building & Sites Committee that the following estimates of various school projects be paid for out of the School Facilities Improvement Project contingency fund:

- a) Beech Street School lighting project (\$860.00 & \$825.00);
- b) Relocation of Southside Jr. High hallway lockers (\$4,900.00, \$7,900.00 and \$5,400.00);
- c) Demolition of CMV wall to provide new 6'x7' gymnasium door at Southside Jr. High; and
- d) painting and drywall project at Wilson Street School (\$1,500.00,

\$1,800.00 and \$2,700.00)

Alderman Roy moved the item for discussion. School Committee Member Gelinas duly seconded the motion.

Alderman Roy stated I guess I would ask the Solicitor about the appropriateness of these four items being added to the design-build contract.

Deputy Solicitor Arnold responded I don't have an answer for you. I would certainly be happy to look at that but I haven't examined those four items in light of the bond documents to make that determination.

Chairman Beaudry stated just to add to that, Alderman Roy this was passed by our Building & Sites Committee and it was the feeling of the Committee that this is major renovation that was done in the schools that we are looking at right now and it should be part of the design-build project. They did the façade out on the Beech Street School and the lighting is part of that out in front. Also there was extensive work at Southside Middle School with the gymnasium and the new addition put on and moving the lockers to the appropriate locations now could be used as part of this design-build. That was our argument at that Committee.

Alderman Roy asked Tim is this work that would be subbed to Gilbane.

Mr. Clougherty answered no. It actually wouldn't necessarily go to the subcontractors that you see on the quotation forms. We were asked...obviously Committeeman Beaudry had a laundry list of projects and we went out and got initial quotations to basically get them in front of the Committee and see if the Committee was interested in doing the work at those amounts. If the Committee was, then we would go out and solicit further quotations depending on the dollar amount and follow the procurement code.

Alderman Roy asked Tim in your opinion if we weren't in the design-build would this be normal maintenance that you would be administering throughout the year.

Mr. Clougherty asked normal maintenance that I would be administering throughout the year. Yes on item a, no on items B, C and D. Those are items that we typically see in a CIP request.

Alderman Roy stated though I want to vote in favor of getting these done, our job is to oversee this contingency effectively and clearly. This Committee has done some things that have come back to haunt us when we approved things. I would like this to go to the Solicitor's Office for a ruling as to whether or not it is appropriate to come out of the design-build money. I would also ask that in the

future anything like this...I know we are looking at other projects down the road but as soon as they do come in if they could go to the Solicitor's Office for a ruling so that when they get here the Solicitor is prepared to make a recommendation yes or no. That would help ease some of the want of getting this done with the responsibility we have to the contingency balance.

Chairman Beaudry stated I respect your concern but the concern that I have sitting here on the School District side is we would like to see these changes done. We just went through a litany of change orders, over 30 of them, that have been done and we didn't have to go through the Solicitor for any of those change orders and now all of the sudden everything is going through the City Solicitor's Office? As a Committee, we have jurisdiction over the funds and I think the funds are there...we pay the debt service and when I say we the School District pays for debt service on it and we should be using it to put into our buildings. If we have a school that had major renovations done to it as Southside did and now the lockers are in a location that they are ineffective, they should be moved to the location where the new classrooms are. It makes the movement in the school much more efficient and students get to their classes on time. There was a large expansion of that school. The lockers are obsolete in the locations they are in right now. I don't know why all of the sudden we are sending everything to the City Solicitor's Office. I mean the closing in of the walls we did that and I still believe that we could close our school walls but that is an issue for another day. I would like to see this go through so we can get this stuff worked on. It is not a lot of money. Again, the money is coming from the School District. We pay the debt service on it and that is all I will say.

Alderman Long stated just to follow-up on that, I have to agree with Alderman Roy because I believe there may be...this may be binding us in some way with respect to the litigation that is going on right now. I would like the approval also. Basically that is our responsibility. We are not trying to raise the bar. It is our responsibility to make sure that we are doing this on the up and up. We are not saying we don't want it done. We are not saying the Building & Sites Committee is not doing the right thing. We are just saying we are responsible to make sure that the finances coming out of this contingency fund are in line and asking the Solicitor to say yes or no...it is not a judgement.

Chairman Beaudry asked then why weren't we doing that on the last 30 we just approved.

Alderman Long answered the change orders are different than these requests. For example, on item C, what is a CMV wall Tim?

Mr. Clougherty replied it is CMU and it is a concrete masonry unit. It is just a masonry wall.

Alderman Long asked and the reason for this gymnasium door. Is it egress or code?

Mr. Clougherty answered this was a request from the principal.

Chairman Beaudry stated when they redid the new gym, they have a mini gym on the other side of the wall and they would like to have a means of egress between the mini gym and the full gym. They want a door there instead of having to go in the hall and down the corridor to get to the mini gym.

Alderman Long asked so it is not an egress issue it is a convenience issue.

Chairman Beaudry answered it is an accessibility issue from one gym to the other gym.

Alderman Long stated this is convenient, not code.

Mr. Clougherty stated this is at Southside, not Memorial.

Chairman Beaudry replied right. It is from the new gym...well the principal calls it a mini gym but it is an exercise room and they use it as a mini gym. There is equipment in there and I guess they have classes in that smaller room. I don't want to belabor this. If those are the wishes of the Committee...I would just like to see the work get done. We did renovations to the school and the lockers really need to be relocated for efficiency and the movement of the students in the classroom. If the Committee wishes to send it to the Solicitor at this point, I am not going to object to it but I would hope that it comes back favorable because again the contingency money is being spent from the School District side. We are paying the debt service on it.

Alderman Roy responded if I could the debt service is paid from homeowner and property owner tax bills that comes through the whole appropriation and budget process, which is quite lengthy as you are quite aware of. My only concern is that as we inquire on this projects that this Committee is doing what this Committee is supposed to do and not bumping other projects from out of the CIP process or out of the normal maintenance process to a contingency paid for process. That is my only concern. I, for one, would love to vote tonight to get every one of these projects done. I watched your Committee meeting and I think that they are all valid. I think that the people requesting these have made an excellent case to get them done. My only concern is that we look at this as what it should be. Should it

be CIP? Should it be maintenance? Should it be paid for out of design-build? I just want to be very clear because on these items I am not. I would love to be as I was with the boilers at Memorial or some of the other lockers. I am not totally clear and that is why I would like the Solicitor to make the judgement. I would love to vote for these tonight trust me.

Chairman Beaudry replied my last comment would be that under other business you had requested some information from the City Solicitor's last month, which apparently we don't have this month. If we are going to request information let's put a timeframe on it so that we get it and are not waiting until the end of school. I would like to get it for our next meeting.

Alderman Roy responded I couldn't agree with you more.

Alderman Lopez stated I have two things. I think when something is said about the Solicitor on this side and they are not performing something I wish that we would get some correspondence from the Joint Committee or the Chairman as to what it is other than publicly chastising our City Solicitor. The second thing I think the Committee should look at not so much as the City Solicitor but also the bonding mechanism and whether these projects fall under that category. I would ask the Committee to look at not only the City Solicitor but the Finance Officer regarding the bonding because it affects the bonding if these projects are not included in the overall budget of \$105 million.

Chairman Beaudry stated I just want to respond to the criticism of the Solicitor's Office. I wasn't criticizing...it was a question by an Alderman, Alderman Roy, requesting at a meeting and you weren't at that meeting but it was done in public session and he asked them to find out who has jurisdiction over the bonding issue. It was supposed to come to this meeting and it is not here. If that is criticizing, it was done in public session and it was an Alderman who asked for that request and the information should have been brought forward.

Alderman Lopez asked can I follow-up.

Chairman Beaudry answered I don't want to debate this.

Alderman Lopez stated I think it had been said by Kevin Clougherty who was the Chief Finance Officer that projects that were bonded, if you use money out of there...that was either at the full Board or at this Committee if that is what you are referring to. If you use money out of the bond it could jeopardize the bonding. The Solicitor might want to comment.

Chairman Beaudry stated go head Mr. Arnold if you want to comment but I believe that is apples and oranges. That was closing in the schools and it was specifically stated in the RFP that we would not be closing in the walls. Am I correct in stating that? That is why Kevin Clougherty came and said that would be against the bonding because it was specific in there that Beech Street School walls would not be part of the project.

Deputy Solicitor Arnold stated just to go back a little in terms of Alderman Roy's request at the last meeting, I do recall Alderman Roy asking about the jurisdiction of this Committee regarding whether maintenance items for instance should come before this Committee or not. That I am ready to report on tonight and I have already spoken to Alderman Roy about that. As for bonding issues, I apologize but I certainly do recall any of those questions being asked at the last minutes when I was in attendance. They are not reflected in my notes and if they were I would have been back to you hopefully with an answer tonight.

Chairman Beaudry stated there was a question and correct me if I am wrong Alderman Roy but you had asked about MST specifically and whose jurisdiction that project would be under. I asked about Memorial High School athletic field and who has jurisdiction over that bonding. Those were the questions I assumed were going to be answered tonight.

Alderman Roy stated I do agree with the Chairman but using the word bonding versus construction...I guess that is where the miscommunication may be. Again I think the Solicitor is ready to report on the jurisdiction of the construction but the administration of that bond and the finances of such I do believe on this subject, Item 7, that I do need clarification before we vote.

Chairman Beaudry stated there is a motion on the floor and a second. Do you want that with a caveat that it goes to the Solicitor's Office for an opinion?

Alderman Roy stated the motion was for discussion so I guess another motion would need to be made for more action to be taken.

Chairman Beaudry replied I never knew you needed a motion for discussion. It is usually passed or fails. What are the wishes of the Committee then?

Alderman Long moved to approve the request pending an opinion from the Solicitor and Chief Financial Officer that contingency funds from the design-build project can be used. Alderman Thibault duly seconded the motion. Chairman Beaudry called for a vote. There being none opposed, the motion carried.

Alderman Long stated this could be approved on Friday or tomorrow or whenever. It doesn't have to come back to this Committee.

Mr. Clougherty stated we just need to make sure that the opinion is clear and I am not throwing any stones at Tom or any other lawyer but I would like to be told whether I can go ahead and do these projects or not. It may not be a yes or no opinion that you get.

Alderman Long stated you could confer with Committeeman Beaudry as to the opinion. Are you telling me you can't determine whether his opinion is a go or not?

Mr. Clougherty replied all I am saying is there is a potential that when the opinion comes out and we meet next month that I could tell you I haven't moved forward on these yet because the opinion isn't black or white.

Alderman Long stated with respect to these projects I have never seen anything that wasn't black or white. It was either black or white.

Chairman Beaudry stated if there is confusion I will call a special meeting if we have to or a phone poll. I would be willing to accommodate the Solicitor and yourself, Tim.

Mr. Clougherty stated we can wait for the opinion and play it by ear.

Deputy Solicitor Arnold stated my understanding of the question that is being asked is whether the use of design-build contingency funds is permitted for these projects.

Chairman Beaudry responded whether we can use the contingency funds to do the renovations listed under Item 7.

Deputy Solicitor replied correct. I think hopefully we could provide a relatively straight answer.

Alderman Thibault asked could we have a written opinion of this from the CFO as well as from the Solicitor so that you know if, in fact, you can go forward or not.

Chairman Beaudry stated I would ask for that.

OTHER BUSINESS

Alderman Roy asked if we could have the Solicitor...I know Tom brought some handouts regarding an RSA as well as some information. Speaking to Item 7, if things could be brought to us earlier than our next agenda so if there is concern we can get it ruled on prior to so there are no delays that would be appreciated. My first question would go to Tim. Tim, have you read this handout? If you could read II (a). Under that, when you read that and look at the work being done at MST and the Memorial field, do you believe that that should come under the jurisdiction of the Joint School Buildings Committee?

Mr. Clougherty responded I think your question might be more appropriately answered by the Solicitor.

Deputy Solicitor Arnold stated as you can see from RSA 199:3, III (a), duties of the Joint School Building Committee are to oversee and decide all matters relating to any construction on schoolhouse buildings. Now construction is not defined within this particular statute but I think that if we give it its common meaning, which is relatively straightforward, that isn't maintenance matters it is construction or renovations. I am not personally aware of the work that is proposed at or going on at the Manchester School of Technology so I couldn't give you an answer in that respect right now but certainly I could educate myself as to what is going on and give you a more specific opinion as to that particular project if that is your desire.

Alderman Roy replied I believe so. Again, I don't want to step on any toes. I just want it to be very clear what this Committee is in charge of and what this Committee is not in charge of. I would make that request that possibly there be a meeting between the Solicitor and Building Maintenance to go through those projects and make some clear cut decisions as to what should be coming to this Committee and what should not. That would be appreciated by this Alderman.

Mr. Clougherty responded based on what Tom Arnold just told us relative to the definition of construction I have seen RSA 199:3 many times and I have it in my little red book and I don't see any reason why the new construction and renovation of MST would not fall under the jurisdiction of this Committee. It is currently anticipated that the project scope is approximately \$10 million. We are renovating a significant portion of this facility. We are adding on and constructing new square footage. I don't understand how that could ever fall outside of the definition of construction. Maybe I am saving Tom and I some time here but I think it clearly falls under RSA 199:3.

Alderman Roy stated with that being said I would just ask that a section be put on our agenda with the Chairman's indulgence and we start being brought up to speed on that project.

Mr. Clougherty asked could you repeat that.

Chairman Beaudry answered Alderman Roy would like to have the MST project as part of the agenda from now on and updates as it moves along. If you look at III (b) it says "prepare and submit monthly status reports relating to the construction progress to the city council and the school board." We should be getting it. Just a quick follow-up on the Memorial High School project, I don't know if there is an answer to that. It is construction but it is not building construction. It is an athletic field. Does that fall under the same jurisdiction? I know that there were change orders done at Memorial that never came before this Committee. That was my question even on the School District side. Who has jurisdiction over that because right now I think it is under the jurisdiction of your office, Tim, even though it was Parks & Rec. I think they had you as the oversight individual for the Memorial field.

Mr. Clougherty replied actually Parks & Recreation was the lead entity on that project and we consulted with them on it. I think that you are getting into an area...first of all getting back to MST if I may. I think there is a relatively fine line between when the project moves from the jurisdiction of the School Board to the jurisdiction of the Joint School Buildings Committee. I think there are two things that need to be defined there. This is merely my opinion but if you look at I at the beginning of the RSA it states "no schoolhouse shall be erected, altered, remodeled or changed in any city school district unless the plans have been previously submitted to the school board of that district and received its approval." That process needs to take place. I am not exactly sure if that process has taken place yet with MST. Secondly, I also think that funding needs to be in place. Until you have a plan that is approved by the School Board and funding in place in order to accommodate that, you don't have a construction project and I don't see us reporting to this Committee on a project that either has no funding or has no approval. Obviously as I stated before that is my opinion but I think it warrants some discussion because we need to know what we should be reporting on either to this Committee or any other entity.

Alderman Long stated just a clarification from Mr. Arnold. The issue at MST was the funding source right? There was some money coming from the City but there was also federal and state funding and there was a question as to who was going to be overseeing that so with respect to MST just be sure in your decision that you take that issue into consideration.

Chairman Beaudry replied that is a good point because I believe that project...out of the \$10 million I think it is only like \$2.5 million that will actually be School District funds and we will be getting as much as 40% or 50% back from the state

for state aid on that money. What money would we have jurisdiction over would be the question?

Deputy Solicitor Arnold responded I don't think the statute draws a distinction as to where the money comes from. It merely says the construction of a schoolhouse building. Now this Committee would oversee funds probably from one or more sources on any given project, especially given the various state statutes regarding funding of schoolhouse construction or renovation. As I said the statute doesn't draw a distinction as to where the funding comes from. It says if it is construction of a schoolhouse building then the jurisdiction is with this Committee.

Chairman Beaudry stated going back to Memorial, does the Solicitor have an opinion on that. It is not a schoolhouse.

Mr. Clougherty replied that is where I was going Mr. Chairman. What is the definition of a schoolhouse? Traditionally you have Parks & Recreation undertaking projects where we are improving playgrounds and playground equipment, athletic fields and the ancillary outbuildings of those athletic fields. Where does that become a schoolhouse?

Chairman Beaudry responded and under the CIP funding as you stated we do improvements to playgrounds all of the time and it is not under the jurisdiction of this Committee so where do you draw that line.

Deputy Solicitor Arnold replied I guess I would have to research that and get back to you. I can certainly look at past practice. I don't believe there is any case law defining a schoolhouse building but I will look for that and get back to you at your next meeting.

Chairman Beaudry stated there was another request last month from Alderman Long regarding attorney fees associated with the lawsuit and getting a breakdown. Do you have any update on that?

Deputy Solicitor Arnold responded certainly. At the last meeting the Committee did ask to see the invoices from the law firm. I spoke to the law firm about that. Our concern at this point is given the ongoing litigation we want to make sure that we don't inadvertently waive any attorney/client privilege that we may have in respect to those invoices. I was speaking to the law firm today as a matter of fact about this very subject. We haven't arrived at a firm conclusion at this point as to how best to proceed in order to protect that attorney/client privilege. I will continue to investigate that and hopefully we will have an answer for your next meeting.

Alderman Long asked so what you are saying is we may be relinquishing attorney/client privilege by making public the invoices.

Deputy Solicitor Arnold answered I think that if you make the invoices public you absolutely waive that privilege.

Alderman Long asked with regard to the invoices or with regard to any attorney/client privilege.

Deputy Solicitor Arnold answered any attorney/client privilege I think if you make it public the privilege is waived. Necessarily an attorney/client privilege is privileged communication that remains between the two parties. What we are investigating here and want to make sure we protect is the Committee's status as either a party or an agent of the City to make sure that we don't inadvertently waive that privilege by providing invoices to the Committee.

Alderman Long asked so how is this Committee going to know what finances are being allocated and why. Is that our responsibility first of all? Are we overseeing that?

Deputy Solicitor Arnold answered I certainly think it falls within the prerogative of this Committee. You have been provided with the total amount of the invoices. My understanding at the last meeting was that you wanted to see the itemized invoices backing up that total.

Alderman Long replied correct.

Deputy Solicitor Arnold stated and that is why we are investigating to make sure that we protect the City's rights.

Alderman Long stated even a...to protect the attorney/client privilege even an invoice that you could draw up yourself just to show us where that money is going instead of the actual invoice. You know 30 hours of phone calls, etc.

Deputy Solicitor responded just to understand what you are talking about you want a more general breakdown just putting the invoices into broad categories such as conferences, telephone calls, e-mails, depositions, etc.

Alderman Long replied yes.

Deputy Solicitor Arnold stated certainly we could do that. We will communicate with our council on that matter just to make sure.

Chairman Beaudry stated I have two quick issues. One is a question. On the contingency money, the \$2.1 million, is that less the \$500,000...we did not vote to put aside \$500,000 for attorney fees but is that \$2.1 million including that \$500,000 or excluding that \$500,000?

Mr. Clougherty responded there is \$2.1 million in there and we are debiting the \$2.1 million on a monthly basis as legal fees are incurred.

Chairman Beaudry asked so \$2.1 million is the total contingency.

Mr. Clougherty answered yes.

Chairman Beaudry stated one other question that I have for the City Solicitor that was brought up after the meeting, you had already left the room but the allegations of inappropriate activity, if there are any legal costs to that, that money is not going to be coming out of the contingency attorney money is it.

Deputy Solicitor Arnold replied in so far as our attorneys incur legal costs in looking at that, yes, I believe it would come out of that money.

Chairman Beaudry stated I have a concern with that only because the contingency money again is being paid back through debt service from the School District. Doesn't the City side have some type of contingency fund for attorney fees? That is litigation. That is activity well beyond the lawsuit of Gilbane and the City. Any activity or attorney costs that are incurred through that other activity should not be part of that contingency money in my opinion. The City should be handling that through either the City Solicitor's Office or if they have an attorney contingency fund but it shouldn't be coming out of the contingency fund that the School District will be paying back. That is a legal matter aside from the lawsuit of Gilbane.

Deputy Solicitor Arnold responded I guess I would disagree with you there. It arises directly out of the lawsuit with Gilbane concerning actions by Gilbane and DMJM and various City employees. We could certainly look at what other sources might be available but again I think it arises directly out of litigation.

Chairman Beaudry asked well could you check into that because I do have a difference of opinion. It is an activity outside the scope of the project and the lawsuit itself. I am not saying anything was right or wrong but that is an activity that was done outside the scope of the project and the litigation between Gilbane and the City on the design-build project itself in my opinion.

There being no further business, on motion of Alderman Thibault, duly seconded by Alderman Roy it was voted to adjourn.

A True Record. Attest.

Clerk of Committee